



Docket No.: 9988.071.00-US
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Gi Hyeong DO

Customer No.: 30827

Application No.: 10/717,610

Confirmation No.: 8195

Filed: November 21, 2003

Art Unit: 3749

For: LAUNDRY DRYER CONTROL METHOD
(Amended)

Examiner: Stephen M. Gravini

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

The Applicant requests a review of the final Office Action dated May 10, 2006 and the Advisory Action dated August 24, 2006 for the reasons discussed below.

First, the final Office Action rejects claims 1-8 and 15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of *Do* (U.S. Patent No. 6,775,923; hereinafter “the ‘923 patent”). Claim 1 of the present application is an independent claim and claims 2, 3, 6-8 and 15 depend from claim 1. It is noted that claims 4 and 5 were canceled prior to the final Office Action. Claim 1 recites a laundry dryer control method which includes “calculating a plurality of temperature variation rates” and “determining whether there is a substantial increase in the temperature variation rate as a function of the plurality of temperature variation rates.” In contrast, claim 1 of the ‘923 patent recites “initiating a drying procedure,” and “determining a medium temperature time by measuring a time lapse from said drying procedure initiating step to a point where the internal temperature reaches a medium temperature between a drying initiation temperature and a maximum drying temperature.”

To support the double patenting rejection, the Examiner alleges that “calculating a temperature variation rate” is simply a broader recitation of “determining a medium temperature time.” See page 5 of the final Office Action dated May 10, 2006. Regardless, claim 1 of the present application was amended, prior to the final Office Action, to include “calculating a plurality of temperature variation rates” and “determining whether there is a substantial increase in the temperature variation rate as a function of the plurality of temperature variation rates.” The claims of the ‘923 patent do not recite either of these steps. Further, the double patenting rejection in the final Office Action does not address these limitations. It appears that the Examiner merely cut and pasted the double patenting rejection from the previous, non-final Office Action without giving consideration to these new claim limitations. At least in light of these new claim limitations the Applicant respectfully requests the double patenting rejection be withdrawn.

Second, the final Office Action rejects claims 1-3 and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over *Kruger* (U.S. Patent No. 4,412,389) in view of *Wentzlaff et al.* (U.S. Patent No. 5,682,684). Claim 1 is an independent claim and claims 2,3 and 6-8 are dependent upon claim 1.

As correctly pointed out in the final Office Action dated May 10, 2006, *Kruger* fails to disclose all the features in claim 1, namely “calculating a plurality of temperature variation rates” and “determining whether there is a substantial increase in the temperature variation rate as a function of the plurality of temperature variation rates.” Thus, the Examiner is forced to rely on *Wentzlaff et al.*, which teaches **taking a temperature** several different times during the drying process. The Examiner further argues that by virtue of taking these measurements and using a computer, *Wentzlaff et al.* inherently teaches “**calculating a plurality of temperature variation rates**” and “**determining whether there is a substantial increase in the temperature variation rate** as a function of the plurality of temperature variation rates.”

The Examiner’s position is technically wrong and legally deficit with regard to inherency. The fact that *Wentzlaff et al.* periodically measures temperature does not mean, as the

Examiner contends, that *Wentzlaff et al.* calculates temperature rate or change in temperature rate, as required by claim 1 of the present application. In fact, *Wentzlaff et al.* contains no suggestion that the temperature measurements are used to calculate or determine change in rate. Facing this reality, the Examiner relies on inherency.

With regard to the Examiner's inherency claim, the Applicant contends that *Wentzlaff et al.* does not inherently teach "calculating a plurality of temperature variation rates" or "determining whether there is a substantial increase in the temperature variation rate as a function of the plurality of temperature variation rates." The Examiner has refused to substantiate the claim that *Wentzlaff et al.* inherently discloses these limitations by providing a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of *Wentzlaff et al.*, as required by the M.P.E.P. 2112

For the reasons as set forth above, the Applicant respectfully requests the current rejection with respect to claims 1-3 and 6-8 be withdrawn.

Lastly, in response to the Applicant's arguments set forth in the Response after final rejection, the Examiner issued an Advisory Action on August 24, 2006 stating that "the scope of the arguments regarding claimed invention are different from that examined such that prosecution would need to be re-opened after a final Office Action which is not in accordance with current Office practice."

The Applicant believes this to mean one of two things, either the Examiner is persuaded by the arguments but improperly refused to re-open prosecution or the Examiner has refused to consider the arguments because they include new arguments not previously considered. If the Examiner's statement means the arguments were persuasive, then the Examiner should have withdrawn the rejections of record. If the Examiner's statement means that the Examiner has refused to consider the arguments because the Examiner believed they included new arguments, the Applicant strongly disagrees. The arguments presented in the Response are the same arguments that

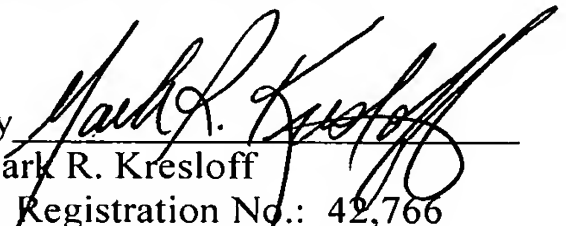
were presented prior to the final Office Action. In which case, the Examiner needs to consider the arguments and make clear that he has done so.

In light of the remarks noted above, the Applicant submits that the Examiner has made several technical errors and several legal errors. Moreover, the Applicant submits that the pending claims are patentable over the prior art cited in the May 11, 2006 final Office Action. Accordingly, the Applicant respectfully requests that the PTO issue a Notice of Allowance or a new, non-final Office Action.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: October 11, 2006

Respectfully submitted,

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